

  
Randal S. Mashburn  
U.S. Bankruptcy Judge



Dated: 1/22/2021 **IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>In re:</b>	)	
	)	<b>Case No. 3:19-bk-1971</b>
<b>CAPSTONE PEDIATRICS, PLLC,</b>	)	
	)	<b>Chapter 7</b>
<b>Debtor.</b>	)	
	)	
	)	
<b>CDS BUSINESS SERVICES, INC.</b>	)	
<b>d/b/a NEWTEK BUSINESS CREDIT.</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Adv. Proc. No. 3:20-ap-90140</b>
	)	
	)	
<b>AMERICA CARES TRUST d/b/a</b>	)	
<b>CARENATION,</b>	)	
	)	
<b>Defendant.</b>	)	

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**AGREED ORDER  
MODIFYING PRELIMINARY INJUNCTION  
AUTHORIZING DISBURSEMENTS TO PARTIES  
UPON COMPLETION OF THE “PHASE II ACCOUNTING PERIOD,”  
MODIFYING AGREED SCHEDULING ORDER  
AND  
CONTINUING PRETRIAL CONFERENCE**

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On January 12, 2021, this Court entered a certain “Agreed Order Modifying Preliminary Injunction and Agreed Scheduling Order” (Docket Entry 65) which read, in pertinent part, as follows:

. . . The Agreed Scheduling Order for Accounting and Reconciliation [Docket Entry 57] is hereby **MODIFIED** as follows:

1. Phasing of Accounting and Reconciliation. The phases for the Accounting and Reconciliation are as follows:

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- (a) **Phase I:** Phase 1 covers the period beginning after the Closing Date (July 21, 2020) and ending on **September 21, 2020**.
- (b) **Phase II:** Phase II covers the period beginning **September 22, 2020** and ending October 31, 2020.
- (c) **Phase III:** Phase III covers the period beginning November 1, 2020 through December 31, 2020.
- (d) **Phase IV:** Phase IV will cover the period beginning January 1, 2021 through the earlier of (i) February 1, 2021, or (ii) the date by which all payors have ceased remittances to the DIP Account.

\* \* \*

- 4. **Phase II:** CareNation made Initial Disclosures for Phase II, which were completed and provided, along with its assertion of entitlement to the funds at issue in the Phase II Period, on or before December 29, 2020. CDS shall advise CareNation of any additional information needed on or before January 11, 2021. CareNation shall provide any additional information requested on or before **January 12, 2021**. Pursuant to the process set forth in the Protective Order, the parties shall meet and confer to validate and authenticate the data contained in the Initial Disclosures on **January 11, 12 and 13, 2021**, for not less than 8 hours that day, unless the parties agree in writing to a shorter number of days or total hours. Assuming that CDS has been afforded full access through CareNation to the payor portals for viewing such unredacted Initial Disclosures as requested over the course of those days, on or before **January 15, 2021**, CDS shall provide CareNation with its conclusions as to the amounts of money collected during the phase II time period which is attributable to services provided by Capstone prior to the APA closing, and services provided by CareNation after the APA closing

... Immediately upon completion of Phase II, and in the event that the Parties are in agreement as to the dates of services for which all payments were made during Phase II, then no later than January 18, 2021, the Parties shall submit an Agreed Order containing stipulations of fact as to the findings of the Phase II Accounting, and providing for the following disbursements from the Provider Account:

- a. Disbursement of a sum in the amount deemed to be the total amount of proceeds of accounts receivable constituting Debtor Proceeds deposited into the Provider Account between September 22, 2020 and October 31, 2020 (the “**Phase II Accounting Period**”) to CDS.

- b. Disbursement to CDS from CareNation Proceeds deposited into the Provider Account during the Phase II Accounting Period a sum in the amount of Twenty Five Thousand Two Hundred Twenty-Eight and 27/100 Dollars (\$25,228.27), said sum constituting the remaining balance of the January APA Payment due and owing from CareNation to CDS, such disbursement being the "**Residual January APA Payment Disbursement**".
- c. Disbursement to CareNation of the remaining balance of CareNation Proceeds deposited into the Provider Account during the Phase II Accounting Period after the Residual January APA Payment Disbursement.

(Docket Entry 65 at pp. 4-5.) As evidenced by the signatures of the signatures of counsel for CDS Business Services, Inc. d/b/a Newtek Business Credit ("CDS") and America Cares Trust, Inc. d/b/a CareNation ("CareNation") (CDS and CareNation collectively, "Parties"), the Parties stipulate to the following:

### **STIPULATIONS OF FACT**

- 1. The Accounting and Reconciliation for Phase II (the "**Phase II Accounting**") was completed on January 18, 2020. Upon conclusion of the Phase II Accounting, the Parties reached, or otherwise agreed to, the following findings:
  - a. That proceeds of accounts receivable totaling \$198,584.35 were deposited into the Debtor's Debtor In Possession (**DIP**) Account with the Bank of America bearing Account No. XXXXXXXX837 (the "**Provider Account**") during the Phase II Accounting Period.
  - b. That \$192,026.98 of proceeds deposited into the Provider Account during the Phase II Accounting Period constituted proceeds of accounts receivable for services rendered by CareNation after the closing of that certain Asset and Purchase Agreement between the Debtor and CareNation on July 20, 2020 (July 21, 2020 being the "**Closing Date**" and such proceeds being "**CareNation Proceeds**").
  - c. That \$6,557.37 of proceeds deposited into the Provider Account during the Phase I Accounting Period constituted proceeds of accounts receivable for

services rendered by the Debtor prior to the Closing Date that CDS was entitled to recover under the DIP Facility and DIP Financing Order (such proceeds “**CDS Proceeds**”).

2. The Purchase Price of the APA is due to CDS. Section 2.07 of the APA requires CareNation to make certain installment payments to CDS, including a cash payment of Sixty-Five Thousand Dollars (\$65,000.00) to CDS payable in immediately available funds by wire transfer to the account of CDS. (hereinafter the “**January APA Payment**”). The January APA Payment was due on or before January 15, 2021.

3. Pursuant to the Court’s January 12, 2021 Order, and in satisfaction of the claim asserted by CareNation to the same in its “Third Expedited Motion and Memorandum In Support of Relief from the Preliminary Injunction and Request For Fed. R. Bankr. P. 7016 Conference” (Docket Entry 59), CDS was authorized to retain the “**CareNation Residual Phase I Proceeds**” (as defined in the January 12, 2021 Order) in the amount of \$39,771.73, and apply the same as partial payment towards the \$65,000.00 January APA Payment due from CareNation to CDS. As a result, only the Residual January APA Payment Disbursement is due and owing to CDS in satisfaction of the January APA Payment.

4. Through the Accounting and Reconciliation, the Parties are continuing to work in good faith to resolve the material issues to be adjudicated in this Adversary Proceeding, and in the process, have increased the likelihood of a resolution that will avoid the time, expense and uncertainty of litigation. The Parties therefore believe that the Pretrial Conference in this matter should be continued until the Accounting and Reconciliation is completed.

**ORDER**

Based upon the foregoing stipulations of fact, and the agreement of the Parties, it is therefore **ORDERED** that the September 18, 2020 Preliminary Injunction in this matter (Docket Entry No. 12) shall be **MODIFIED** as follows:

1. Immediately upon entry of this Order, the Debtor, by and through the Chief Restructuring Officer (**CRO**), is hereby authorized and directed to disburse from the Provider Account a wire transfer in the amount of Thirty One Thousand Seven Hundred Eighty Five and 64/100 Dollars (\$31,785.64) payable to CDS Business Services, Inc. d/b/a Newtek Business Credit. Said disbursement constitutes the \$6,557.37 of CDS Proceeds due to CDS for the Phase II Accounting Period that remain in the Provider Account, as well as the \$25,228.27 constituting the Residual January APA Payment Disbursement.

2. Immediately upon entry of this Order, the Debtor, by and through the Chief Restructuring Officer (**CRO**), is hereby authorized and directed to disburse from the Provider Account a wire transfer in the amount of One Hundred Sixty Six Thousand Seven Hundred Ninety Eight and 71/100 Dollars (\$166,798.71) payable to America Cares Trust, Inc. d/b/a CareNation, said disbursement constituting the remaining balance of CareNation Proceeds deposited into the Provider Account during the Phase II Accounting Period after the Residual January APA Payment Disbursement.

3. In order to facilitate the disbursement provided in this Order and anticipated future disbursements, it is understood by the Parties that Bank of America must remove the current “credit only” designation on the Provider Account. Pending further order of this Court, the CRO, Jim Davis, is and shall continue to be the only authorized person for accessing, withdrawing, using, transferring or disbursing from the Provider Account. The injunction remains in effect enjoining

CareNation and its agents from accessing, withdrawing from, using, transferring out of, encumbering or preventing access to the Provider Account. If not previously terminated or cancelled, the Sweep Order between Debtor, CDS and Bank of America with regard to Account 837 is ordered to be suspended pending further order of this Court, in order to ensure that until such time as all CareNation proceeds are removed from that account, no funds therein are inadvertently remitted to CDS. Subject to further orders of this Court, neither Debtor nor CDS shall access, withdraw from, use, transfer out of, disburse or encumber the Provider Account.

4. The Agreed Scheduling Order for Accounting and Reconciliation is hereby **MODIFIED** as follows:

\* \* \*

**3. Phases III and IV:** CareNation shall make its Initial Disclosures for Phase III, which were completed and provided, along with its assertion of entitlement to the funds at issue in the Phase III Period, on or before **January 22, 2021**. CDS shall advise CareNation of any additional information needed on or before **January 25, 2021**. CareNation shall provide any additional information requested on or before **January 28, 2021**. If necessary, pursuant to the process set forth in the Protective Order, the parties shall meet and confer to validate and authenticate the data contained in the Initial Disclosures on **February 1 and 2, 2021**, for not less than 8 hours that day, unless the parties agree in writing to a shorter number of days or total hours. Assuming that CDS has been afforded full access through CareNation to the payor portals for viewing such unredacted Initial Disclosures as requested over the course of those days, on or before **February 4, 2021**, CDS shall provide CareNation with its conclusions as to the amounts of money collected during the Phase III time period which is attributable to services provided by Capstone prior to the APA closing, and services provided by CareNation after the APA closing.

Scheduling of disclosures, requests for supplements, meetings to confer and conclusions concerning Phase IV of the Accounting and Reconciliation are hereby reserved pending completion of Phase III.

5. Immediately upon completion of Phase III, and no later than **February 5, 2021**, the Parties shall have leave to submit an Agreed Order containing stipulations of fact

as to the findings of the Phase III Accounting, and providing for the following disbursements from the Provider Account:

- a. Disbursement of a sum in the amount deemed to be the total amount of proceeds of accounts receivable constituting Debtor Proceeds deposited into the Provider Account between November 1, 2020 and December 31, 2020 (the “**Phase III Accounting Period**”) to CDS.
- b. Disbursement to CareNation of the remaining balance of CareNation Proceeds deposited into the Provider Account during the Phase III Accounting Period.

5. The Pretrial Conference in this matter is hereby **CONTINUED** until the Accounting and Reconciliation in this matter is completed. Said Pretrial Conference shall be reset by Order of the Court, or upon motion by either Party.

6. Except as otherwise ordered above, the Preliminary Injunction and Agreed Scheduling Order remain in full force and effect, pending further Orders of this Court. All claims, defenses and other matters regarding the subject matter of this Adversary Proceeding, and the APA, are hereby **RESERVED**.

It is so **ORDERED**.

*[This order was signed and entered electronically as indicated at the top of the first page.]*

**SUBMITTED FOR ENTRY:**

**BONE McALLESTER NORTON PLLC**

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed electronically on January 22, 2021. Notice of this filing was sent by operation of the Court's electronic filing system to all those parties specifically requesting electronic service and as indicated on the electronic filing receipt. Parties may also access this filing through the Court's electronic filing system.

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